

LOUISVILLE-JEFFERSON COUNTY  
METRO GOVERNMENT  
US 42 (BROWNSBORO ROAD)  
LEFT-TURN LANE AT COUNTRY LANE  
\$300,000 – FD39 FUNDS

**AGREEMENT BETWEEN  
COMMONWEALTH OF KENTUCKY  
TRANSPORTATION CABINET  
DEPARTMENT OF HIGHWAYS  
AND  
LOUISVILLE-JEFFERSON COUNTY METRO GOVERNMENT**

**THIS AGREEMENT**, entered into by and between the Commonwealth of Kentucky, Transportation Cabinet, Department of Highways, hereinafter referred to as the “**Department**,” and Louisville-Jefferson County Metro Government, 527 West Jefferson Street, Louisville, KY 40202, hereinafter referred to as the “**Metro**”.

**WITNESSETH:**

**WHEREAS**, the parties hereto desire to construct a left-turn lane on US 42 (Brownsboro Road) westbound at Country Lane and the addition of a center left-turn lane on US 42 between Country Lane and Mockingbird Gardens Drive, which shall hereinafter be referred to as the “**Project**”;

**WHEREAS**, the **Metro** desires to be the lead agency and perform this **Project** to provide safe access for the commuting public by reducing congestion;

**WHEREAS**, the **Metro** shall refer to the applicable state requirements listed in the Interim Project Development Guide for Local Public Agencies and any future revisions for assistance in complying with this Agreement;

**WHEREAS**, the **Metro** has asked the **Department** for funding assistance for costs incurred during the right-of-way acquisition, utility relocation, and construction phases of this **Project**;

**WHEREAS**, the **Department** agrees this is a worthwhile **Project** and is willing to reimburse the **Metro** up to \$300,000 in state funds (FD39) for the completion of this **Project**; and

**WHEREAS**, any cost in excess of the reimbursement funding (\$300,000) for the right-of-way, acquisition, utility relocation, and construction of this **Project** will be the responsibility of the **Metro**.

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**NOW, THEREFORE**, in consideration of these premises and the mutual covenants contained herein, the parties hereby agree as follows:

1. The **Department** agrees to reimburse the **Metro** up to \$300,000 for completion of work by the **Metro**, or consultants, contractors, or subcontractors hired by the **Metro**, under the obligations of this Agreement for the following **Project**:

To construct a left-turn lane on US 42 (Brownsboro Road) westbound at Country Lane and add a center left-turn lane on US 42 between Country Lane (CS 1054B at milepoint 3.660) and Mockingbird Gardens Drive (CS 1043B at milepoint 3.536). This **Project** is designed to enhance mobility and safety in the residential and commercial area by reducing congestion. The design phase of the **Project** will be completed by the **Department**; however, the right-of-way acquisition, utility relocation, and construction phases of the **Project** shall be the responsibility of the **Metro**.

2. The **Department** has authorized up to \$350,000 in state contingency funding (FD39) for all eligible expenses for this **Project**. The **Department** shall retain \$50,000 in funding for design services and the remaining \$300,000 shall be made available for reimbursement to the **Metro** for all eligible expenses to the right-of-way, utility, and construction phases. All charges to the **Project** shall be supported by properly executed invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of the charge. The **Department** may require additional documentation at their discretion. The **Metro** shall be responsible for all eligible costs above the \$300,000 as well as any costs deemed ineligible for reimbursement from this **Project**. Any additional funding obligated for the completion of this **Project** shall be evidenced in writing by both parties with a Supplemental Agreement.
3. This Agreement is contingent upon the continued availability of appropriated funding. If the funding appropriated for any Phase of the **Project** becomes unavailable for any reason including: the Kentucky General Assembly's failure to appropriate the funding, by operation of law or as the result of a reduction in funding, further reimbursement of **Project** expenditures may be denied, the **Project** may be cancelled, the timeline extended or the scope amended by the **Department** either in whole or in part without penalty. Denial of further reimbursement, **Project** cancellation, extension or amendment because of an

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interruption in the appropriated funding is not a default or breach of this Agreement by the **Department** nor may such denial, cancellation, extension or amendment give rise to any claim against the **Department**.

4. The effective date of this Agreement is the date of signature by the Secretary of the **Department's** Transportation Cabinet. The Term of Eligible Reimbursement under this Agreement shall be three (3) years from the date of its execution unless extended or amended by written Agreement in accordance with the provisions of KRS 45A. Any and all funding obligated for any phase of this **Project** shall be available to reimburse the **Metro** for eligible work activities completed and costs incurred prior to expiration.
5. The **Metro** shall follow state specifications for each necessary phase of this **Project**. The **Metro** shall adhere to all state regulations, including KRS 45A, KRS 176, KRS 177, and all terms of this Agreement for activities related to this **Project** as lead agency. The **Metro** will obtain any required permits, licenses or easements required to initiate, perform, and complete work and provide documentation to the **Department's** District 5 Office in Louisville. In addition, the **Metro** is responsible to meet all other requirements and adhere to all regulations necessary to qualify for the receipt of these state funds. Concurrence must be obtained by the **Metro** through the **Department's** District 5 Chief District Engineer in Louisville prior to the awarding of any contract for work or materials to be used on this **Project**.
6. State construction criteria for the type of work shall be followed, including but not limited to the **Department's** Highway Design Manual, the **Department's** Standard Drawings, the **Department's** Standard Specifications for Road and Bridge Construction, the **Department's** Drainage Manual, the **Department's** Structural Design Manual, the American Association of State Highway Transportation Officials' (AASHTO) "Policy on Geometric Design of Highways and Streets", and the Institute of Transportation Engineers' (ITE) Manual on Uniform Traffic Control Devices (MUTCD). All work performed shall be in accordance with the **Department's** Standard Specifications for Road and Bridge Construction, edition 2008 as revised, and as provided in Subsection 105.01 of said Specifications. All materials furnished shall be in accordance with Subsection 106 of said Specifications to include all **Department** List of Approved Materials. These standards, specifications, and criteria are incorporated in this Agreement by this reference.

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7. The **Metro** must obtain encroachment permits to allow for work to be accomplished on state owned right-of-way from the **Department's** District 5 Office in Louisville. Should the **Project** require the acquisition of any interest in real property by the **Metro** and the **Metro** does not have the authority to acquire property by eminent domain, the applicability of the Uniform Relocation Assistance (URA) and Real Property Acquisitions Policies Act shall apply. The **Metro** shall ensure that all real property acquisition, relocation assistance, and property management are completed in a fair, equitable and approved manner consistent with all State laws and regulations governing the acquisition of real property for public use using State highway funding. In all real property acquisitions, concurrence must be obtained through the **Department's** Division of Right of Way and Utilities and shall be subject to review and approval by the **Department**.
8. The **Metro** acknowledges that the **Department** will require the placement of a restrictive easement approved by the **Department** in the chain of title of any real property acquired or improved pursuant to the **Project** in favor of the **Department**. If the owner of any real property acquired or improved pursuant to the **Project** is different from the **Department**, then the owner shall sign and be made a party to this Agreement and the owner hereby acknowledges, covenants and consents to the placement of a restrictive easement for perpetual maintenance of the property acquired or improved pursuant to the **Project** in the chain of title in favor of the **Department** prior to final reimbursement by the **Department**.
9. The **Metro** agrees to use only licensed contractors and subcontractors who are pre-qualified to do work for the **Department** for any necessary construction services. The **Metro** shall be responsible for all **Project** construction activities, which may be completed either by the **Metro's** staff or through the advertisement, opening of bids, selection, and contracting for contractor services in accordance with the Model Procurement Code provisions of KRS 45A and KRS 424. Specific requirements defined within KRS 45A require that the award be made to the lowest responsive bidder meeting the criteria of responsibility established by the **Department**. The **Metro** must receive **Department** approval for all change orders and shall have approval of the appropriate governing authority, but shall not increase the funding obligated to the **Metro** as a result of this Agreement.

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10. The **Metro** shall be responsible for all aspects of administration, measuring, testing, and inspections to ensure the materials and work meets the **Department's** specifications of the construction contract. This includes providing daily, on-site inspection of the contractor's work activities and processing all of the paper work associated with the construction contract, including any change orders. The **Department** shall have access to the **Project** area and may conduct field reviews of the **Project** at any time. These field reviews are intended to verify status of the **Project**, performance of the contractor, adequacy of the **Metro** oversight, conformance with all laws, regulations, and policies and provide assistance to the **Metro** as may be necessary.
11. The **Metro** may submit to the **Department's** District 5 Office in Louisville current billings reflecting the actual cost of work incurred during any given work period, which will be paid within a reasonable time after receipt by the **Department**; however, in no event is the **Metro** to submit billings for work performed for less than a thirty (30) day period.
12. The **Metro** is responsible for ensuring that all **Project** construction activities have been completed and are responsible for providing all of the necessary paperwork as required by the construction contract. The **Metro** will conduct a field inspection to verify completion of the work in conformance with the Agreement. This documentation must be provided to the **Department's** District 5 Chief District Engineer in Louisville prior to final payment of the **Project**. When both the **Metro** and the **Department** accept the field work as complete, the **Metro's** project manager shall certify the **Project** was constructed in accordance with the plans and specifications. Upon receipt of the **Department's** Final Acceptance Report, the **Metro** will issue the final payment to the contractor with an official Release of Contractor form for signature.
13. The **Metro** agrees to maintain the facilities in an acceptable condition and for a public purpose in perpetuity. In addition, any applicable landscaping and streetscape improvements included in the **Project** shall be maintained in an acceptable condition to include mowing, trimming, weed control, debris removal, or other maintenance functions necessary to protect the public interest and maintain the initial intent of the **Project**. In the event that the property is not maintained as a public facility, the **Metro** shall reimburse the **Department** for all

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proceeds provided for in this **Project** including any applicable interest, unless such change in use is approved in writing by the **Department**, if applicable.

14. The **Metro** shall maintain for a period of three (3) years all records of materials, equipment, and labor costs involved in the performance of work of said **Project**. In order to obtain reimbursement from the **Department** for constructing said **Project**, the **Metro** shall submit to the **Department's** District 5 Office in Louisville documented invoices of materials, equipment, and labor used on the **Project**, including certification that the work was accomplished on a publicly maintained facility.
15. No member, officer, or employee of the **Department** or the **Metro** during his tenure or for one (1) year thereafter shall have any financial interest, direct or indirect, in this Agreement or the proceeds thereof as identified in KRS 45A.340. The **Department** and the **Metro** shall comply with the requirements of the Executive Branch Code of Ethics KRS Chapter 11A. The **Metro** warrants that no person, elected official, selling agency or other organization has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. No member, officer, or employee of the **Department** or **Metro** shall collude or lobby on behalf of this **Project** without penalty, including but not limited to suspension or debarment.
16. To the extent permitted by law, the **Metro** shall indemnify and hold harmless the **Department** and all of its officers, agents, and employees from all suits, actions, or claims of any character arising from any injuries, payments or damages received or claimed by any person, persons, or property resulting from implementation of any phase of the **Project** or occurring on or near the **Project** site.
17. The **Metro** hereby acknowledges it is responsible to inform any entity it intends to hire or use as a contractor, as defined in KRS 45A.030(7), that the contracting agency, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any of the contractor's books, documents, papers, records, or other evidence, which are directly pertinent to this Agreement for the purpose of financial audit or program review. Furthermore, any of the contractor's books, documents, papers, records or other evidence provided to the contracting agency, the Auditor of Public

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Accounts, or the Legislative Research Commission which are directly pertinent to the Agreement shall be subject to public disclosure regardless of the proprietary nature of the information.

18. Any dispute concerning a question of fact in connection with the work not disposed of by Agreement between the **Metro** and the **Department** shall be referred to the Secretary of the Transportation Cabinet of the Commonwealth of Kentucky, or his duly authorized representative, whose decision shall be final.
19. The **Department** reserves the right to cancel this Agreement at any time deemed to be in the best interest of the **Department** by giving thirty (30) days written notice of such cancellation to the **Metro**. If the Agreement is cancelled under this provision, the **Department** shall reimburse the **Metro** according to the terms hereof to the date of such cancellation. Any dispute concerning a question of fact in connection with the work not disposed of by Agreement between the **Metro** and the **Department** shall be referred to the Secretary of the Transportation Cabinet of the Commonwealth of Kentucky, or his duly authorized representative, whose decision shall be final. Any proposed change or extension to this Agreement shall be at the mutual consent of the **Metro** and the **Department** and be evidenced in writing.
20. It is understood and agreed by these parties that if any part of this contract is held by the courts to be illegal or in conflict with any law of the Commonwealth of Kentucky, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular part, term, or provision held to be invalid.
21. The **Metro** will pass a resolution authorizing the Mayor to sign this Agreement on behalf of the **Metro**. A copy of that resolution shall be attached to and made a part of this Agreement.

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IN WITNESS WHEREOF, the parties have caused these presents to be executed by their officers thereunto duly authorized.

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METRO GOVERNMENT

COMMONWEALTH OF KENTUCKY  
TRANSPORTATION CABINET

\_\_\_\_\_  
Jerry E. Abramson  
Mayor

\_\_\_\_\_  
Michael W. Hancock  
Acting Secretary

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED AS TO FORM & LEGALITY

\_\_\_\_\_  
Todd Shipp  
Office of Legal Services

DATE: \_\_\_\_\_